

1 LAURENCE F. PULGRAM (CSB NO. 115163)  
*lpulgram@fenwick.com*  
 2 JEDEDIAH WAKEFIELD (CSB NO. 178058)  
*jwakefield@fenwick.com*  
 3 MARY E. MILIONIS (CSB NO. 238827)  
*mmilionis@fenwick.com*  
 4 LIWEN A. MAH (CSB NO. 239033)  
*lmah@fenwick.com*  
 5 FENWICK & WEST LLP  
 555 California Street, 12th Floor  
 6 San Francisco, CA 94104  
 Telephone: (415) 875-2300  
 7 Facsimile: (415) 281-1350

8 Attorneys for Defendant  
 CHORDIANT SOFTWARE, INC. and DEREK  
 9 WITTE

10 **[ADDITIONAL PARTY APPEARS ON  
 SIGNATURE PAGE]**

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

15 NETBULA, LLC and DONGXIAO YUE,  
 16 Plaintiffs,  
 17 v.  
 18 CHORDIANT SOFTWARE, INC., et al.,  
 19 Defendants.  
 20

Case No. 5:08-cv-00019-JW (HRL)

**STIPULATION AND [PROPOSED]**  
**ORDER SUBSTITUTING**  
**PEGASYSTEMS INC. FOR DEFENDANT**  
**CHORDIANT SOFTWARE, INC., AND**  
**CONTINUING HEARING DATE ON**  
**OBJECTION TO REPORT AND**  
**RECOMMENDATION**

1           **SUBSTITUTION OF PEGASYSTEMS INC. FOR CHORDIANT SOFTWARE, INC.**

2           WHEREAS named Defendant Chordiant Software, Inc. has recently completed its merger  
3 with Pegasystems Inc.;

4           WHEREAS Pegasystems Inc. and Chordiant Software, Inc. filed a certificate of merger  
5 with the Commonwealth of Massachusetts on May 28, 2010;

6           WHEREAS Pegasystems Inc. and Chordiant Software, Inc. filed a certificate of  
7 ownership and merger with the Delaware Secretary of State on May 28, 2010 and the Delaware  
8 Secretary of State certified the effective date of the certificate of ownership was May 31, 2010;

9           WHEREAS Chordiant Software, Inc. is no longer a separate going concern and the  
10 surviving entity is known as Pegasystems Inc.;

11           WHEREAS Chordiant Software, Inc. has filed a Certificate of Surrender with the  
12 California Secretary of State, endorsed by the California Secretary of State on January 29, 2011;

13           WHEREAS the parties have agreed to the substitution of Defendant Chordiant Software,  
14 Inc. with Pegasystems Inc. pursuant to Federal Rule of Civil Procedure 25;

15           **CONTINUING POTENTIAL HEARING ON REPORT AND RECOMMENDATION**

16           WHEREAS Magistrate Judge Lloyd issued a Report and Recommendation recommending  
17 that Defendant Derek Witte be awarded attorneys' fees as a prevailing party on December 17,  
18 2010 (Dkt. No. 594);

19           WHEREAS Plaintiffs filed an objection and motion for de novo review of Magistrate  
20 Judge Lloyd's Report and Recommendation on December 31, 2010, with a noticed hearing date  
21 of March 7, 2011 (Dkt. No. 596);

22           WHEREAS Defendant Derek Witte filed a response to that objection on January 18, 2011  
23 pursuant to Federal Rule of Civil Procedure 72 (Dkt. No. 599);

24           WHEREAS the Parties have agreed to a mediation, currently scheduled for March 30,  
25 2011;

26           WHEREAS the Parties have conferred and believe that mediation will be more effective if  
27 the Parties continue any hearing date on Plaintiffs' objection to Magistrate Judge Lloyd's Report  
28 and Recommendation;



